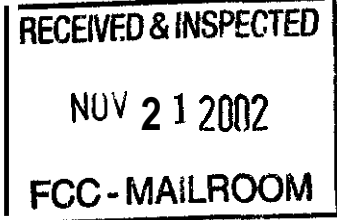


Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the Matter of )

Rules and Regulations Implementing the )  
Telephone Consumer Protection Act of 1991 )

CG Docket No. 02-278

**ORDER**

**Adopted: November 19, 2002**

**Released: November 20, 2002**

**Comment Date: December 9, 2002**

**Reply Comment Date: January 8, 2003**

By the Chief, Consumer & Governmental Affairs Bureau:

1. On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (Notice) seeking comment on whether to revise or update its existing rules governing the use of the telephone network for unsolicited advertising via telephone and facsimile machines.<sup>1</sup> These rules were adopted pursuant to the Telephone Consumer Protection Act of 1991 (TCPA).<sup>2</sup> In addition, the Commission sought comment on whether to revisit the option of establishing a national do-not-call list. The Notice was published in the Federal Register on October 8, 2002, establishing a comment date of November 22, 2002 and reply comment date of December 9, 2002.<sup>3</sup> For the reasons set forth below, we now extend the comment and reply comment dates to December 9, 2002, and January 8, 2003, respectively. Comments should be filed pursuant to the instructions provided in the Notice.

2. On October 17, 2002, the American Teleservices Association (ATA) submitted a request, pursuant to the Freedom of Information Act (FOIA), seeking access to, among other things, over 11,000 complaints regarding telemarketing practices and 1,500 inquiries regarding predictive dialers cited by the Commission in the Notice.<sup>4</sup> On November 13, 2002, ATA filed a

<sup>1</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, CG Docket No. 02-278, CC Docket No. 92-90, FCC 02-250 (rel. Sept. 18, 2002) (Notice).

<sup>2</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227. The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*

<sup>3</sup> 67 Fed. Reg. 62667 (Oct. 8, 2002).

<sup>4</sup> FOIA Request – Control No. 2003-023

motion for extension of time to file comments “for a period of at least 90 days. or 30 days after a date on which the Commission commits the documents requested by ATA will be made available.” Specifically, ATA contends that an extension of time is necessary to develop a full record in this proceeding because (1) “critical documents cited by the Commission as motivating factors in establishing the instant docket remain unavailable for public inspection,” and (2) the 15-day reply comment period is too short given the volume of comments likely to be filed in this proceeding.<sup>6</sup> On November 15, 2002, ATA filed a supplemental motion for extension of time? In its *Supplemental Motion*, ATA notes that the deadline for a response to its FOIA request is November 29, 2002, a week after the current deadline for filing comments in this proceeding. ATA therefore reiterates its request to extend the comment period.

3. It is not Commission policy to routinely grant extensions of time.<sup>8</sup> However, we find that a brief extension of time to file comments in this proceeding is in the public interest. We therefore grant, in part, and deny, in part, ATA’s request to extend the comment period in this proceeding. In so doing, we note that many parties seeking to file comments in this proceeding are consumers who may lack familiarity with the Commission’s process for filing comments.<sup>9</sup> We believe an extension of time will help to ensure that these parties have ample opportunity to participate. In addition, the Electronic Comment Filing System (ECFS) was down from November 10, 2002 until the afternoon of November 14, 2002, making it impossible for parties to electronically file or review comments during this period. Furthermore, because the Consumer & Governmental Affairs Bureau responded to ATA’s FOIA request on November 14, 2002 by giving ATA 250 redacted complaints, the additional time will afford ATA ample opportunity to review those complaints.” Finally, we extend the reply comment period to 30 days following the comment deadline to allow parties a sufficient opportunity to respond to the large number of comments already, or expected to be, filed in this proceeding.”

4. We decline, however, to extend the comment period to the full extent requested by ATA. We do not believe that it would be in the public interest to delay this entire proceeding by several months based on the rationale provided in ATA’s motion. In particular, we disagree with ATA’s contention that ATA must obtain the approximately 11,000 TCPA-related complaints and 1,500 inquiries filed from 2000-2001 prior to commenting on the issues presented in the Notice. The Notice presents, in detail, the specific issues and rules that **are** under consideration for review in this proceeding. We believe this information allows parties a full and complete opportunity to respond to these issues. In addition, as noted above, the Commission has provided 250 such complaints to ATA in response to its FOIA request. ATA

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<sup>5</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, *Motion For Extension of Time* (filed Nov. 13, 2002) (*Motion*).

<sup>6</sup> *Motion* at 1.

<sup>7</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, *Supplement To Motion For Extension Of Time* (filed Nov. 15, 2002) (*Supplemental Motion*)

<sup>8</sup> See 47 C.F.R. § 1.46(a).

<sup>9</sup> The vast majority of comments filed in this proceeding thus far have been received from consumers.

<sup>10</sup> See Letter from K. Dane Snowden, FCC, to Ronnie London, Counsel for ATA, dated Nov. 14, 2002 (Nov. 14 Letter). ATA has been informed that the Commission must redact any personal information from the complaints prior to their being made public. See Nov. 14 Letter.

<sup>11</sup> As of November 19, 2002, over 4,100 comments have been filed in response to the Notice.

will have an opportunity to analyze those complaints prior to submitting its comments. The Commission intends to work diligently to provide a complete response to ATA's FOIA request. To the extent necessary, ATA will have additional opportunities to supplement its comments through *ex parte* filings.

5. IT IS ORDERED that, pursuant to section 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j) and sections 0.141.0.361, and 1.46 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, and 1.46, the request for extension of time filed by American Teleservices Association IS GRANTED, IN PART, AND DENIED, IN PART.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "K. Dane Snowden", with a long horizontal flourish extending to the right.

K. Dane Snowden

Chief

Consumer & Governmental Affairs Bureau